

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cv-00141-FDW

THIS MATTER is before the Court on Plaintiff's Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act (the "Motion"). (Doc. No. 17). The Equal Access to Justice Act provides:

(d) (1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, *within thirty days of final judgment in the action*, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412 (d)(1)(A)-(B).

On December 7, 2016, this Court granted Plaintiff's motion for summary judgment and reversed and remanded the case to the Commissioner of Social Security. (Doc. No. 11). The Clerk of Court entered judgment in accordance with the Court's order on December 9, 2016. Plaintiff filed a stipulation and order for fees under the Equal Access to Justice Act on February 15, 2017, that was deleted by the Clerk of Court in accordance with this Court's standing orders and practice. (Doc. Nos. 13, 16). Plaintiff moved for the first time for attorney's fees pursuant to the Equal Access to Justice Act on April 12, 2018. As April 12, 2018 is over thirty days after final judgment in this action, Plaintiff's Motion is untimely.

THEREFORE, the Court DENIES Plaintiff's Motion for Attorney's Fees Pursuant to the Equal Access to Justice Act (Doc. No. 17).

IT IS SO ORDERED.

Signed: April 23, 2018



Frank D. Whitney
Chief United States District Judge

